

EXHIBIT 10



Transcript of Amber D. Compton

Date: December 16, 2016

Case: Corcoran, et al. -v- CVS Pharmacy, Inc.

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Transcript of Amber D. Compton
Conducted on December 16, 2016

1 (1 to 4)

<p style="text-align: center;">1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA</p> <p>CHRISTOPHER CORCORAN, et al., Plaintiffs, vs. CVS PHARMACY, INC., Defendant.</p> <p style="text-align: right;">Case No.: 3:15-cv-03504-YGR</p> <p style="text-align: center;">VIDEO-RECORDED DEPOSITION OF AMBER D. COMPTON TAKEN ON BEHALF OF THE PLAINTIFFS DECEMBER 16, 2016</p> <p>(Starting time of the deposition: 9:32 a.m.)</p>	<p style="text-align: center;">3 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA</p> <p>CHRISTOPHER CORCORAN, et al., Plaintiffs, vs. CVS PHARMACY, INC., Defendant.</p> <p style="text-align: right;">Case No.: 3:15-cv-03504-YGR</p> <p style="text-align: center;">VIDEO-RECORDED DEPOSITION OF AMBER D. COMPTON, produced, sworn and examined on December 16, 2016, between the hours of nine o'clock in the forenoon and noon of that day, at the offices of Bryan Cave LLP, One Metropolitan Square, 211 North Broadway, Suite 3600, St. Louis, Missouri 63102-2750, before William L. DeVries, a Certified Court Reporter (MO), Certified Shorthand Reporter (IL), Registered Diplomate Reporter, and Certified Realtime Reporter, in a certain cause now pending in the United States District Court, Northern District of California, between CHRISTOPHER CORCORAN, et al., Plaintiffs, vs. CVS PHARMACY, INC., Defendant; on behalf of the Plaintiffs.</p>																										
<p style="text-align: center;">2 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">I N D E X</p> <table> <tr> <th>QUESTIONS BY:</th><th>PAGE</th></tr> <tr> <td>MR. GILMORE</td><td>7</td></tr> <tr> <td>MS. MAINIGI</td><td>90</td></tr> <tr> <td>MR. SITARCHUK</td><td>92</td></tr> <tr> <td>MR. GILMORE</td><td>93</td></tr> </table> <p style="text-align: center;">E X H I B I T S</p> <table> <tr> <th>EXHIBIT</th><th>PAGE</th></tr> <tr> <td>Exhibit 613 Subpoena</td><td>8</td></tr> <tr> <td>Exhibit 618 Declaration of Amber D. Compton</td><td>13</td></tr> <tr> <td>Exhibit 532 CVS/Express Scripts provider contract</td><td>65</td></tr> <tr> <td>Exhibit 617 2008 Express Scripts Network Provider Manual</td><td>69</td></tr> <tr> <td>Exhibit 615 2010 Express Scripts Network Provider Manual</td><td>71</td></tr> <tr> <td>Exhibit 616 2016 Express Scripts Network Provider Manual</td><td>76</td></tr> <tr> <td>Exhibit 619 August 10, 2016 complaint</td><td>81</td></tr> </table> <p>(The exhibits were retained by the court reporter to be attached to the original and copies of the transcript.)</p>	QUESTIONS BY:	PAGE	MR. GILMORE	7	MS. MAINIGI	90	MR. SITARCHUK	92	MR. GILMORE	93	EXHIBIT	PAGE	Exhibit 613 Subpoena	8	Exhibit 618 Declaration of Amber D. Compton	13	Exhibit 532 CVS/Express Scripts provider contract	65	Exhibit 617 2008 Express Scripts Network Provider Manual	69	Exhibit 615 2010 Express Scripts Network Provider Manual	71	Exhibit 616 2016 Express Scripts Network Provider Manual	76	Exhibit 619 August 10, 2016 complaint	81	<p style="text-align: center;">4 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>For the Plaintiffs:</p> <p>Mr. Robert B. Gilmore Stein Mitchell Cipollone Beato & Missner LLP 1100 Connecticut Avenue, NW, Suite 1100 Washington, D.C. 20036 (202) 601-1589 rgilmore@steinmitchell.com</p> <p>For the Defendant:</p> <p>Mr. Enu Mainigi Williams & Connolly LLP 725 Twelfth Street, N.W. Washington, D.C. 20005 (202) 434-5000 emainigi@wc.com</p> <p>For the Witness:</p> <p>Mr. Eric W. Sitarchuk Morgan, Lewis & Bockius LLP 1701 Market Street Philadelphia, Pennsylvania 19103-2921 (215) 963-5000 eric.sitarchuk@morganlewis.com</p>
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2 (5 to 8)

<p>5</p> <p>1 Also present:</p> <p>2 Mr. John Niehaus, Videographer</p> <p>3 Ms. Allison Stoll, Express Scripts</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 Court Reporter:</p> <p>9 William L. DeVries, RDR/CRR</p> <p>10 Missouri CCR #566</p> <p>11 Illinois CSR #084-003893</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 and whom they represent?</p> <p>2 MR. GILMORE: Robert Gilmore with Stein</p> <p>3 Mitchell on behalf of plaintiffs and the class.</p> <p>4 MS. MAINIGI: Enu Mainigi from Williams</p> <p>5 & Connolly for the defendants.</p> <p>6 MS. STOLL: Allison Stoll for the</p> <p>7 witness.</p> <p>8 MR. SITARCHUK: Eric Sitarchuk for the</p> <p>9 witness.</p> <p>10 VIDEOGRAPHER: The court reporter today</p> <p>11 is Bill DeVries representing Planet Depos. Would</p> <p>12 the reporter please swear in the witness?</p> <p>13 COURT REPORTER: Do you swear or affirm</p> <p>14 that the testimony you are about to give in this</p> <p>15 proceeding will be the truth, the whole truth, and</p> <p>16 nothing but the truth?</p> <p>17 A. THE WITNESS: Yes, I do.</p> <p>18 EXAMINATION</p> <p>19 QUESTIONS BY MR. GILMORE:</p> <p>20 Q. Good morning, Ms. Compton.</p> <p>21 A. Good morning.</p> <p>22 Q. Could you please state your full name</p> <p>23 for the record?</p> <p>24 A. Sure. Amber Dawn Compton.</p> <p>25 Q. What is your current home address?</p>
<p>6</p> <p>1 IT IS HEREBY STIPULATED AND AGREED by</p> <p>2 and between counsel for the Plaintiffs and counsel</p> <p>3 for the Defendant that this deposition may be taken</p> <p>4 in shorthand by William L. DeVries, RDR/CRR, a</p> <p>5 Certified Court Reporter and Certified Shorthand</p> <p>6 Reporter, and afterwards transcribed into</p> <p>7 typewriting; and the signature of the witness is</p> <p>8 expressly waived.</p> <p>9 * * * * *</p> <p>10 AMBER D. COMPTON,</p> <p>11 of lawful age, produced, sworn and examined on</p> <p>12 behalf of the Plaintiffs, deposes and says:</p> <p>13 (Starting time of the deposition: 9:32 a.m.)</p> <p>14 VIDEOGRAPHER: We're on the record.</p> <p>15 This is the deposition of Amber D. Compton in the</p> <p>16 matter of Christopher Corcoran, et al., versus</p> <p>17 CVS Pharmacy, Inc., in the U.S. District Court for</p> <p>18 the Northern District of California, Case Number</p> <p>19 15-cv-3504-YGR.</p> <p>20 Today's date is December 16th, 2016.</p> <p>21 The time on the video monitor is 9:32 a.m. The</p> <p>22 videographer today is John Niehaus representing</p> <p>23 Planet Depos. This video deposition is taking place</p> <p>24 at Bryan Cave in St. Louis, Missouri.</p> <p>25 Will counsel please identify themselves</p>	<p>8</p> <p>1 A. 630 Willow Lake Court, Weldon Spring,</p> <p>2 Missouri 63304.</p> <p>3 Q. I'm going to hand you what we marked as</p> <p>4 Plaintiffs' Exhibit 613.</p> <p>5 (WHEREIN, Exhibit 613, Subpoena, was</p> <p>6 marked for identification.)</p> <p>7 Q. (By Mr. Gilmore) Plaintiffs'</p> <p>8 Exhibit 613 is a subpoena for you to testify at this</p> <p>9 deposition that was served and accepted by your</p> <p>10 attorneys. You understand that you are testifying</p> <p>11 today pursuant to this deposition subpoena?</p> <p>12 A. Yes.</p> <p>13 Q. Have you been deposed before?</p> <p>14 A. No, I have not.</p> <p>15 Q. Let me go over some ground rules for</p> <p>16 what depositions involve. My job is to ask you</p> <p>17 questions that you understand. Is that fair?</p> <p>18 A. Yes.</p> <p>19 Q. And your job is to answer my questions</p> <p>20 to the best of your ability, okay?</p> <p>21 A. Yes.</p> <p>22 Q. It's important since this is being</p> <p>23 transcribed that you give verbal answers rather than</p> <p>24 head shakes or uh-huhs. Fair?</p> <p>25 A. Yes.</p>

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5 (17 to 20)

17	19
1 contract to prepare this declaration?	1 But you'll still answer the question to the best of
2 A. I did not -- I didn't review it. I	2 your ability.
3 worked with Allison to --	3 A. I don't -- I don't have -- I have not
4 MR. SITARCHUK: I'd instruct you not to	4 had any conversations with anyone at Express Scripts
5 answer beyond that.	5 regarding these club or member programs. It's been
6 A. THE WITNESS: Okay.	6 our position that they were outside of the contract
7 MR. SITARCHUK: Worked with Allison is	7 that we would have held with CVS or that we do
8 good enough.	8 currently hold with CVS, and I wouldn't have engaged
9 Q. (By Mr. Gilmore) So you yourself	9 with others regarding the programs.
10 haven't checked to confirm that the cited language	10 Q. If you haven't had conversations with
11 in the CVS/Express Scripts provider agreement is	11 anyone else at Express Scripts regarding these club
12 accurate?	12 member programs, how do you know it's our position,
13 A. I'm familiar with the language that's	13 as you said, Express Scripts' position versus just
14 in there, yes, in their contract.	14 your own?
15 Q. You didn't compare the cited language	15 MS. MAINIGI: Objection to form.
16 here with the contract itself in preparing this	16 A. When the programs were introduced to
17 declaration; is that right?	17 the market they were a program that was created that
18 A. When I was reviewing the document for	18 was unique for a specific patient. Patient had to
19 the draft for the final declaration I was in	19 choose to participate in the program, and therefore
20 agreement with the language that was included.	20 we felt that our position that we took was this was
21 Q. My question was a little different.	21 outside of the usual and customary retail pricing.
22 I'm just asking you, you didn't take a copy of the	22 Q. (By Mr. Gilmore) My question was a
23 contracts and compare the language with what's in	23 little different.
24 the declaration? You're relying on someone else; is	24 A. Okay.
25 that right?	25 Q. And I'll ask you questions about
18	20
1 A. Yes, I was relying on Allison.	1 your -- your positions as you express them in the
2 Q. Sitting here today, are you aware of	2 declaration, but you've said a couple times that
3 anything that you would correct or say differently	3 these are our positions or we viewed this. And I'm
4 in this declaration?	4 just trying to understand what's your basis for
5 A. No.	5 saying that? How did you learn that Express Scripts
6 Q. You say you have no knowledge of anyone	6 as a company holds these positions that you're
7 else's thoughts on this, meaning the views that you	7 saying it holds?
8 express in this declaration. Why don't you have any	8 MS. MAINIGI: Objection to form.
9 knowledge of other people at Express Scripts	9 A. It would be the area responsible --
10 thoughts on what you say in this declaration?	10 responsible for this contracting exercise with CVS
11 MS. MAINIGI: Objection to form.	11 and how we interpret the language would be my team.
12 MR. SITARCHUK: Objection to form.	12 So I collectively I guess used we as my -- my
13 Q. (By Mr. Gilmore) You can answer.	13 organization, my responsibility.
14 A. So I can answer. Okay. I'm sorry.	14 Q. (By Mr. Gilmore) Do you know if your
15 Q. If -- if your attorney instructs you on	15 supervisors throughout the -- I guess going back to
16 privilege grounds not to answer, then that would be	16 say --
17 the only ground that you can't --	17 A. Uh-huh.
18 A. Okay.	18 Q. -- 2008 to the present, have they
19 Q. -- answer unless you don't understand	19 expressed views to you that match up with what
20 my question in --	20 you've set forth in this declaration about CVS's
21 A. Okay.	21 membership program, Health Savings Pass program?
22 Q. -- which case I'll try and rephrase it.	22 A. If we would have had those
23 Let me know.	23 conversations if those discussions would have
24 A. Okay.	24 occurred, this is our -- this would have been the
25 Q. But otherwise, they'll make objections.	25 position that those predecessors along with myself

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6 (21 to 24)

<p>21</p> <p>1 would have had the same view.</p> <p>2 Q. Did those conversations occur to your</p> <p>3 recollection?</p> <p>4 A. We had awareness that these programs</p> <p>5 were in the marketplace. We did. There were --</p> <p>6 there were ways through NACDS. There were ways</p> <p>7 through Drug Store News when a program was -- like</p> <p>8 this type of program was launched, whether it was</p> <p>9 CVS or whether it was anyone else.</p> <p>10 So we had knowledge that the programs</p> <p>11 existed. We looked at the way the programs were</p> <p>12 structured. To the extent that we felt they were</p> <p>13 outside of the usual and customary pricing, our</p> <p>14 position, my position was they were outside of the</p> <p>15 contract that I held with the said retailer.</p> <p>16 Q. Again, my question is a little</p> <p>17 different, and I'll try and make myself clear.</p> <p>18 A. Okay.</p> <p>19 Q. I'm really asking do you recall</p> <p>20 conversations, meetings, memos, something where you</p> <p>21 communicated to someone else or someone else</p> <p>22 communicated to you within Express Scripts the views</p> <p>23 that you express in your declaration?</p> <p>24 A. I mean, we -- I would have made a</p> <p>25 business decision that these club or membership</p>	<p>23</p> <p>1 I am currently the vice president,</p> <p>2 retail strategy and contracting for</p> <p>3 Express Scripts, Inc., Express Scripts,</p> <p>4 one of the largest pharmacy benefit</p> <p>5 management, PBM, companies in the</p> <p>6 United States.</p> <p>7 Did I read that all correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Can you tell us what a PBM is?</p> <p>10 A. Sure. It's an organization that's</p> <p>11 designed to work with a variety of plan sponsors to</p> <p>12 manage their pharmacy benefit.</p> <p>13 Q. As a PBM Express Scripts clients are</p> <p>14 what you call plan sponsors?</p> <p>15 A. Plan sponsors or clients.</p> <p>16 Q. And these plan sponsors are insurance</p> <p>17 companies, employee benefit plans, those kinds of</p> <p>18 organizations?</p> <p>19 A. Correct.</p> <p>20 Q. Are Express Scripts clients also the</p> <p>21 individuals insured under those plans?</p> <p>22 A. I'm sorry. Say it again.</p> <p>23 Q. Do Express Scripts clients, do they</p> <p>24 include individuals who are insured under the plans</p> <p>25 that the plan sponsors --</p>
<p>22</p> <p>1 programs were outside of our contract. So yes,</p> <p>2 there would have been some discussion around the</p> <p>3 program. The consensus was I felt these programs</p> <p>4 were exempt from our contract.</p> <p>5 Q. Did your supervisors need to approve</p> <p>6 that decision, do you remember?</p> <p>7 A. We would have, yes --</p> <p>8 Q. Do --</p> <p>9 A. -- from a business perspective.</p> <p>10 Q. Do you recall a specific meeting or --</p> <p>11 A. I do not recall.</p> <p>12 Q. Okay. Or any specific action that your</p> <p>13 supervisors and you took where they said, yes,</p> <p>14 Amber, you're right, I agree with your position?</p> <p>15 A. I don't recall.</p> <p>16 MR. SITARCHUK: And Amber, make sure to</p> <p>17 wait for Rob to finish his question before you</p> <p>18 answer.</p> <p>19 A. THE WITNESS: Okay.</p> <p>20 MR. GILMORE: That was a little bit of</p> <p>21 a long question.</p> <p>22 MR. SITARCHUK: And he paused a little</p> <p>23 bit, so ...</p> <p>24 Q. (By Mr. Gilmore) In your declaration</p> <p>25 in paragraph one you say (quote as read):</p>	<p>24</p> <p>1 A. Yes.</p> <p>2 Q. -- have? Express Scripts contracts</p> <p>3 with pharmacies like CVS, right?</p> <p>4 A. Correct.</p> <p>5 Q. And those contracts allow Express</p> <p>6 Scripts clients to use their member's insurance at</p> <p>7 CVS stores, fair?</p> <p>8 A. Correct.</p> <p>9 Q. How is Express Scripts paid generally</p> <p>10 speaking for performing its PBM business with</p> <p>11 respect to transactions at a pharmacy like CVS?</p> <p>12 A. We -- from the pharmacy perspective?</p> <p>13 Q. Yes.</p> <p>14 A. We have a variety of networks that CVS,</p> <p>15 for example, would contract with and participate in,</p> <p>16 and the reimbursement is negotiated between the two</p> <p>17 parties.</p> <p>18 Q. And then, generally speaking, how is</p> <p>19 Express Scripts paid by its clients?</p> <p>20 A. I've -- I've not spent time on the</p> <p>21 client side, so I don't have -- wouldn't be able to</p> <p>22 answer that.</p> <p>23 Q. I think I heard you say that there are</p> <p>24 two parts in terms of how CVS pays Express Scripts.</p> <p>25 By joining an Express Scripts network and then</p>

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13 (49 to 52)

<p style="text-align: right;">49</p> <p>1 way the programs were presented and how they were 2 constructed. 3 Q. (By Mr. Gilmore) The third sentence of 4 paragraph ten of your declaration reads (quote as 5 read): 6 The prices offered under legitimate 7 membership programs, i.e. prices not 8 offered to all of a given pharmacy's 9 customers, are generally not included 10 in the pharmacy's usual and customary 11 price under the Express Scripts, Inc. 12 pharmacy provider agreement. 13 Did I read all that correctly? 14 A. Yes, you did. 15 Q. You used the phrase legitimate 16 membership programs, right? 17 A. Uh-huh. 18 MR. SITARCHUK: You got to say yes or 19 no. 20 A. Yes. 21 Q. (By Mr. Gilmore) What makes a 22 membership program legitimate versus not legitimate? 23 A. The -- the term I -- I feel I used that 24 term for as these programs were being introduced to 25 the -- to the public, being put on a press release,</p>	<p style="text-align: right;">51</p> <p>1 that would make the program not a legitimate 2 membership program? 3 MR. SITARCHUK: Objection to form. 4 MS. MAINIGI: Objection to form. 5 Q. (By Mr. Gilmore) Fair? 6 MR. SITARCHUK: Objection to form. 7 MS. MAINIGI: Join. 8 A. I don't think it would be a program. 9 MR. SITARCHUK: We've been going for an 10 hour. Let's take a break. 11 MR. GILMORE: Sure. 12 VIDEOGRAPHER: We're going off the 13 record at approximately 10:30 a.m. 14 (WHEREIN, a recess was taken.) 15 VIDEOGRAPHER: We're back on the record 16 at approximately 10:42 a.m. 17 Q. (By Mr. Gilmore) Ms. Compton, we're 18 still looking at paragraph ten in your declaration, 19 Plaintiffs' Exhibit 618. The third sentence which 20 we read before says (quote as read): 21 Prices offered under legitimate 22 membership programs, i.e. prices not 23 offered to all of a given pharmacy's 24 customers, are generally not included 25 in the pharmacy's usual and customary</p>
<p style="text-align: right;">50</p> <p>1 offered at the point of sale at the counter for the 2 customers, that these were valid and true membership 3 programs. 4 Q. In other words, a membership program 5 wouldn't be legitimate or valid and true if those 6 prices are offered to people not in the program? 7 MS. MAINIGI: Objection to form. 8 A. I don't know all of the details of the 9 programs, so again, if the customer chose to 10 participate in the program, it's up to them to 11 understand what -- what the program consists of and 12 what benefits they'll get from that program. 13 Q. (By Mr. Gilmore) Is what makes the 14 program, these membership programs you're talking 15 about a legitimate program that the only way you get 16 these prices is if you have enrolled in the program 17 and paid the fee? 18 MR. SITARCHUK: Objection to form. 19 MS. MAINIGI: Join. 20 A. Generally if you've enrolled in the 21 program, yes, you've made a decision to enroll in 22 the program. 23 Q. (By Mr. Gilmore) And so if as a 24 customer you could get these prices from CVS even if 25 you hadn't enrolled in the program and paid the fee,</p>	<p style="text-align: right;">52</p> <p>1 price under the Express Scripts, Inc. 2 pharmacy provider agreement. 3 I want to ask you about that word 4 generally. Does that indicate that sometimes 5 membership program prices are included in the 6 pharmacy's usual and customary price under the 7 Express -- Express Scripts agreement? 8 A. No, U&C is a defined term. So it's 9 pursuant to -- the U&C definition will be pursuant 10 to the contract negotiation. 11 Q. Could you delete generally and replace 12 it with never or -- I'm sorry. 13 Could you delete generally not and 14 replace it with never? 15 MR. SITARCHUK: Never not. 16 MS. MAINIGI: Objection. 17 MR. SITARCHUK: Sure that works? I'll 18 object to form. 19 Q. (By Mr. Gilmore) Let me ask it a 20 different way. What I'm trying to get at is I see 21 the qualifier generally. When I see that, to me 22 that means that most of the time membership program 23 prices are not included in the pharmacy's usual and 24 customary price under Express Scripts agreements, 25 but sometimes they may be. Is that true, what I</p>

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14 (53 to 56)

<p>53</p> <p>1 just said?</p> <p>2 MS. MAINIGI: Objection.</p> <p>3 A. No. I don't have any membership -- any</p> <p>4 contractual agreement where a membership program</p> <p>5 would be included in the definition of usual and</p> <p>6 customary.</p> <p>7 Q. (By Mr. Gilmore) Let's turn to</p> <p>8 paragraph eleven in your declaration. You say</p> <p>9 (quote as read):</p> <p>10 In my experience, there was general</p> <p>11 awareness in the marketplace that</p> <p>12 pharmacies with a membership program</p> <p>13 were not reporting the membership</p> <p>14 program prices as usual and customary</p> <p>15 prices.</p> <p>16 What's your basis to say there was</p> <p>17 general awareness?</p> <p>18 A. The -- the programs were public</p> <p>19 programs. They were available knowledge wise</p> <p>20 through the press releases that we've discussed, and</p> <p>21 my understanding, my position is that like Express</p> <p>22 Scripts they were generally excluded from usual and</p> <p>23 customary prices. General understanding. Again, I</p> <p>24 don't have detailed knowledge. It's just a general</p> <p>25 statement.</p>	<p>55</p> <p>1 price, fair?</p> <p>2 MS. MAINIGI: Objection.</p> <p>3 A. That is fair. I can't point to</p> <p>4 anything.</p> <p>5 Q. (By Mr. Gilmore) Nor can you point us</p> <p>6 to any written communication occurring at the time</p> <p>7 that says, from Express Scripts to CVS, Express</p> <p>8 Scripts knows you're not submitting this as the</p> <p>9 usual and customary price and Express Scripts agrees</p> <p>10 with that? You can't point us to any document that</p> <p>11 says that, right?</p> <p>12 MS. MAINIGI: Objection.</p> <p>13 A. That's correct.</p> <p>14 Q. (By Mr. Gilmore) Turn to paragraph 17</p> <p>15 of your declaration. You say (quote as read):</p> <p>16 I was aware that CVS was not submitting</p> <p>17 to Express Scripts the membership</p> <p>18 program prices as CVS's U&C price on</p> <p>19 prescription drug claims.</p> <p>20 Did I read that correctly?</p> <p>21 A. You did, yes.</p> <p>22 Q. How did you become aware of that?</p> <p>23 A. Again, we -- I viewed the membership</p> <p>24 program as being outside of the Express Scripts CVS</p> <p>25 contract. Wouldn't have expected them to be part of</p>
<p>54</p> <p>1 Q. Did you talk with employees at other</p> <p>2 PBMs in which those employees at other companies</p> <p>3 said they also were -- knew that pharmacies were not</p> <p>4 submitting these membership program prices as usual</p> <p>5 and customary prices?</p> <p>6 A. No, I would --</p> <p>7 MS. MAINIGI: Objection.</p> <p>8 A. I would have not spoken with other PBMs</p> <p>9 regarding this or any contract term.</p> <p>10 Q. (By Mr. Gilmore) Do you recall any</p> <p>11 communication to you from someone at CVS saying</p> <p>12 something to the effect of, Amber, CVS is not going</p> <p>13 to submit its Health Savings Pass prices at its</p> <p>14 usual and customary prices?</p> <p>15 A. No, I do not recall that conversation</p> <p>16 or a conversation.</p> <p>17 Q. Are you aware of anyone at CVS having</p> <p>18 that kind of conversation with anyone else besides</p> <p>19 you at Express Scripts?</p> <p>20 A. I'm not, no.</p> <p>21 Q. And you can't point us to a letter or</p> <p>22 e-mail or any other written communication between</p> <p>23 anyone at Express Scripts and anyone at CVS</p> <p>24 reflecting that CVS is not going to submit its</p> <p>25 Health Savings Pass price as its usual and customary</p>	<p>56</p> <p>1 the contract or claims adjudication to Express</p> <p>2 Scripts.</p> <p>3 Q. Putting aside that you didn't expect</p> <p>4 CVS to submit these prices, what did you do or learn</p> <p>5 to in fact know that CVS was not submitting to</p> <p>6 Express Scripts the membership prices as CVS's usual</p> <p>7 and customary prices?</p> <p>8 MR. SITARCHUK: Objection to form.</p> <p>9 MS. MAINIGI: Join.</p> <p>10 A. I'm not sure I understand what you're</p> <p>11 asking.</p> <p>12 Q. (By Mr. Gilmore) So I heard you say</p> <p>13 that you didn't expect CVS to submit the HSP prices</p> <p>14 at CVS's usual and customary prices. In paragraph</p> <p>15 17 you say you were aware that CVS was not doing</p> <p>16 that. I'm just trying to understand what you did to</p> <p>17 get that knowledge? Did you look at data? Did you</p> <p>18 look at some kind of communication, some -- any</p> <p>19 information or something that would in fact confirm</p> <p>20 for you at the time CVS is not submitting these</p> <p>21 prices as its usual and customary prices?</p> <p>22 A. Well, pursuant to the contract U -- U&C</p> <p>23 is a defined term within our contract. I had taken</p> <p>24 a position that these programs were outside of their</p> <p>25 usual and customary pricing and wouldn't be subject</p>

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Transcript of Amber D. Compton
Conducted on December 16, 2016

24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 A. No.</p> <p>2 Q. So do you have any knowledge of what</p> <p>3 was said to Medicare or TRICARE -- Medicare part D</p> <p>4 or TRICARE either way?</p> <p>5 A. No.</p> <p>6 MR. SITARCHUK: That's all I have.</p> <p>7 Thank you.</p> <p>8 FURTHER EXAMINATION</p> <p>9 QUESTIONS BY MR. GILMORE:</p> <p>10 Q. Are you aware of the existence of any</p> <p>11 investigations of Express Scripts by Medicare part D</p> <p>12 or TRICARE or any other government agency relating</p> <p>13 to usual and customary pricing?</p> <p>14 MR. SITARCHUK: And I'd object and</p> <p>15 instruct you not to answer to the extent if any that</p> <p>16 would call for communications with counsel, but if</p> <p>17 you have any awareness other than that, please</p> <p>18 answer the question.</p> <p>19 A. No, I don't have any awareness.</p> <p>20 Q. (By Mr. Gilmore) Are you aware of any</p> <p>21 litigation that Express Scripts has been involved in</p> <p>22 regarding the usual and customary pricing that</p> <p>23 pharmacies submit?</p> <p>24 MR. SITARCHUK: Same instruction.</p> <p>25 A. No, not aware.</p>	<p style="text-align: right;">95</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2</p> <p>3 I, William L. DeVries, a Certified</p> <p>4 Court Reporter (MO), Certified Shorthand Reporter</p> <p>5 (IL), Registered Diplomate Reporter, and a Certified</p> <p>6 Realtime Reporter, do hereby certify that the</p> <p>7 witness whose testimony appears in the foregoing</p> <p>8 deposition was duly sworn by me pursuant to Section</p> <p>9 492.010 RSMo; that the testimony of said witness was</p> <p>10 taken by me to the best of my ability and thereafter</p> <p>11 reduced to typewriting under my direction; that review</p> <p>12 was not requested; that I am neither counsel for, related</p> <p>13 to, nor employed by any of the parties to the action</p> <p>14 in which this deposition was taken, and further that I</p> <p>15 am not a relative or employee of any attorney or counsel</p> <p>16 employed by the parties thereto, nor financially or</p> <p>17 otherwise interested in the outcome of the action.</p> <p>18</p> <p>19 <i>William L. DeVries</i></p> <p>20 _____</p> <p>21 Certified Court Reporter</p> <p>22 within and for the State of Missouri</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">94</p> <p>1 Q. (By Mr. Gilmore) Are you aware of any</p> <p>2 litigation that Express Scripts has been involved in</p> <p>3 regarding pharmacies' discount membership programs?</p> <p>4 MR. SITARCHUK: Same instruction.</p> <p>5 A. No, not aware.</p> <p>6 MR. GILMORE: No further questions.</p> <p>7 MS. MAINIGI: Nothing for me. Thank</p> <p>8 you.</p> <p>9 MR. SITARCHUK: We're done.</p> <p>10 VIDEOGRAPHER: We're going off the</p> <p>11 record at approximately 11:41 a.m.</p> <p>12 (WHEREIN, the deposition was concluded</p> <p>13 at 11:41 a.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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